99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-780

FOR THE RELIEF OF DAVID BUTLER, ALDO CIRONE, RICHARD DENISI, WARREN FALLON, CHARLES HOTTON, HAROLD JOHNSON, JEAN LAVOIE, VINCENT MALONEY, AUSTIN MORTENSEN, AND KURT OLOFSSON

AUGUST 11, 1986.– Committed to the Committee of the Whole House and ordered to be printed

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Mr. GLICKMAN, from the Committee on the Judiciary, submitted the following

AUG 26 1986

REPORT

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DEPOSITORY 376

[To accompany H.R. 1755]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1755) for the relief of David Butler, Aldo Cirone, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortensen, and Kurt Olofsson having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PAYMENT BY SECRETARY.

The Secretary of the Treasury shall pay the sum of $33,433.25, out of any funds in the Treasury not otherwise appropriated, to the United States Property and Fiscal Officer for the State of Massachusetts to be distributed by such officer in accordance with section 2. Such payment shall be in full settlement of all claims against the United States arising from the unauthorized placement of the persons named in paragraphs (1) through (10) of section 2(a) under the Federal civil service retirement system upon the reemployment of such persons with the Massachusetts National Guard.

SEC. 2. PAYMENT BY UNITED STATES PROPERTY AND FISCAL OFFICER.

(a) PAYMENT.—Except as provided in subsection (b), the United States Property and Fiscal Officer for the State of Massachusetts, upon receiving the payment authorized by section 1, shall pay—

(1) $3,792.35 to David Butler;
(2) $4,457.47 to Aldo Cirone;
(3) $1,126.87 to Richard Denisi;
(4) $7,791.68 to Warren Fallon;
(5) $1,848.11 to the estate of Charles Hotton;
(6) $4,417.49 to Harold Johnson;
(7) $2,096.58 to Jean Lavoie;
(8) $3,212.69 to Vincent Malony;
(9) $1,911.38 to Austin Mortensen; and
(10) $2,778.63 to Kurt Olofsson.

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(b) DEDUCTION OF INTEREST OBLIGATION.—If any person named in paragraphs (1) through (10) of subsection (a) has an interest obligation to the Massachusetts State Board of Retirement on the date of enactment of this Act because of the unauthorized placement of such person under the Federal civil service retirement system, the United States Property and Fiscal Officer for the State of Massachusetts shall pay such obligation from the amount authorized for payment under subsection (a) before making any payment to, or on behalf of, such person under subsection (a).

SEC. 3. LIMITATION ON ATTORNEY'S FEES.

No amount in excess of 10 percent of any payment authorized by section 2(a) shall be paid to, or received by, any agent or attorney in consideration for services rendered in connection with such payment. Any violation of this section shall be a misdemeanor and any person convicted thereof shall be fined not more than $1,000.

PURPOSE

The bill, H.R. 1755, as amended, authorizes that ten Massachusetts National Guard technicians be paid the amounts following their names in full settlement of their claims against the United States arising from the unauthorized placement of the claimants under the Federal Civil Service Retirement System.

BACKGROUND

In January 1969, the National Guard Technicians Act of 1968 became effective. Under this Act, National Guard technicians could elect whether to stay with the State retirement systems or participate in the Federal Civil Service retirement system. The option was available only at the inception of the program on January 11, 1969, and the election was final and conclusive at that time for technicians of any state.

In interpreting and applying the 1968 Act on behalf of the Federal Government, the Massachusetts National Guard erroneously advised the ten technicians listed in this bill that, if they terminated employment and were subsequently rehired, the could elect at the time of rehire to join the Federal Civil Service retirement system.

The ten National Guard technicians listed in this legislation terminated their employment with the Massachusetts National Guard and were subsequently rehired. Upon rehire, they elected to withdraw their contributions from the Massachusetts retirement fund and convert them to the Federal Civil Service Retirement and Disability Fund. They participated by making contributions to the Federal Civil Service retirement program from the time each individual was rehired until 1977 when the error was determined. At that time, the retirement amounts that had previously been contributed to the Massachusetts National Guard, but withdrawn, were transferred back to the State fund from the Federal fund.

When funds are withdrawn from the Massachusetts state retirement fund and later repaid, the State requires that it be repaid with interest for the period it was out of the fund. H.R. 1755 pays for the interest that would have accrued on each individuals account had the funds been left in the State retirement system.

The Department of the Army, on behalf of the Department of Defense, reported to the Committee that there is a strong equitable basis for relief in this case. The technicians relied on erroneous advice. The complicated nature of the retirement election process enhanced the need for reliance on this advice by the technicians.

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The matter has been cured administratively except for the interest costs suffered by these individuals. The Army further pointed out that this is an isolated incident and recommended that H.R. 1755 be enacted.

H.R. 1755, as amended, reflects the actual amount of interest lost by each individual and which is to be paid. The Executive Secretary of the State Board Retirement of the Commonwealth of Massachusetts has certified that the figures in the bill, as amended, are correct.

On the basis of the facts and equities presented in this matter, the committee favorably reports H.R. 1755 to the House, and recommends that the House pass the bill.

DEPARTMENT OF THE ARMY,
Washington DC, April 17, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army on H.R. 1755, 99th Congress, a bill "For the relief of David Butler, Aldo Cirone, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortensen, and Kurt Olofsson."

The purpose of the bill is to reimburse several National Guard technicians of the Massachusetts National Guard for interest payments they made as a consequence of faulty advice concerning their elections as to which retirement fund they would participate in, the Federal Civil Service retirement fund or the retirement fund for employees of the State of Massachusetts. The technicians made an election to stay with the State retirement system when the National Guard Technicians Act of 1968 became effective in January of 1969. That election was final and conclusive for technicians of any State. Massachusetts National Guard officials, in interpreting and applying the 1968 Act on behalf of the Federal government, erroneously advised these technicians that, if they terminated employment and subsequently were rehired by the Massachusetts National Guard, they could elect at the time of rehire to join the Federal Civil Service retirement system. In fact, State National Guard Technicians had the option to shift to the Federal system only at the inception of the program on 11 January 1969.

The persons mentioned in H.R. 1755 followed the erroneous advice of the National Guard and, after a break in their service were rehired by the Massachusetts National Guard. They then elected to withdraw their contributions from the Massachusetts retirement fund and to convert those contributions to the Civil Service Retirement and Disability Fund. They participated by making contributions to the Federal Civil Service retirement program from the time each individual was rehired until 1977 when the error was determined. At that time, the retirement accounts of these individuals, which include the amounts that previously had been contributed to the Massachusetts National Guard but were withdrawn, were transferred back from the Federal fund to the State fund.

H.R. 1755 would pay the subjects of the bill only the interest costs each suffered as a result of their retirement accounts being out of the State retirement fund (the State requires that if a participant's account is withdrawn and later repaid, it must be repaid with interest for the period it was out). The bill also would pay for interest that would have accrued on each individual's account had the individuals left their retirement in the State retirement system. The combined interest payments reflect the amounts stated for each individual in section 2(b)(1) of the bill.

The Department of the Army, on behalf of the Department of Defense, favors enactment of H.R. 1755. It is clear that the named individuals suffered expenses not intended by the National Guard Technicians Act of 1968 as a consequence of the erroneous advice of the National Guard. The erroneous advice creates no liability in law on the part of the United States; however, there is a strong equitable basis for relief. The technicians, to their detriment, relied on the erroneous advice and incorrectly participated in the improper retirement system. The incorrect interpretation and administration of the Federal law of the fund by Massachusetts National Guard created a misleading presumption of regularity upon which the technicians relied.

The complicated nature of the retirement election process enhanced the need for reliance by the technicians. The matter has been cured administratively except for the out of pocket interest costs suffered by those individuals named in H.R. 1755. This is an isolated incident. The Army knows of no others similarly situated by such erroneous advice. There is no legal authority or principle that overcomes the compelling equitable nature of the relief. Accordingly, the Department of the Army, on behalf of the Department of Defense, recommends enactment.

The Comptroller General of the United States on April 13, 1983 (File: B-208523) reported that there was no legal basis to pay the interest cost suffered by the affected technicians.

If enacted, the cost of H.R. 1755 would be $32,605.27 and such award would be paid from the General Fund. The bill would have no impact on the budgetary requirements for the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

WAYNE E. GRANT,
Acting Assistant Secretary of the Army,
(Financial Management).

STATE BOARD OF RETIREMENT,
Boston, MA, July 8, 1986.

Hon. BARNEY FRANK,
U.S. Congress, Longworth Building, Washington, DC.

DEAR CONGRESSMAN FRANK: I hereby certify the figures presented to you by Colonel Anthony Camuso have been verified by a member of my staff to be true and accurate to the best of his knowledge. Any consideration you and your colleagues can give to HR 1755 would be appreciated.

Very truly yours,

JAMES W. CALLANAN,
Executive Secretary.

THE ADJUTANT GENERAL'S OFFICE,
SUPPORT PERSONNEL MANAGEMENT OFFICE,
Natick, MA, June 25, 1986.

Congressman BARNEY FRANK,
Attention: Mr. ROBERT NORRIS,
Longworth Building, Washington, DC.

DEAR MR. NORRIS: During the past two weeks, I met with Massachusetts State Retirement Board personnel, as well as nine of the technicians involved. A careful and detailed review was made of all records and a few discrepancies were identified; however, the total amount of money sought is less than stated in my 1 May 1986 letter to you.

The discrepancies were the result of administrative errors. Four (4) technicians had requested and were authorized by the Retirement Board to pay back monies owed through extra bi-weekly payroll deductions. Unfortunately, the extra deductions were made, but not identified as such when the money was transferred to the Retirement Board which, in turn, posted the deductions against the technicians' regular account.

Listed below is the corrected update of monies due the State Board of Retirement or the technicians:

Part 1 is the interest on monies refunded to these technicians at the time of their resignation. I have computed this interest from the date of the technicians' reemployment with the Massachusetts National Guard projected through September 1986 or the actual date this obligation was paid by the technician.

Part 2 represents the 2% difference between 7% contributions to the Federal Civil Service Retirement System and the 5% required by the State Retirement System for those technicians in the 5% category or the interest on 7% contributions, paid by the technicians who are in the 7% category.

Richard Denisi [1]:	
Part I	$38.1(
Part II	1,088.7
Total	1,126.8
Jean Lavoie [1]:	
Part I	187.8
Part II	1,908.7
Total	2,096.5

Austin Mortensen [1]:	
Part I	900.15
Part II	1,011.23
Total	1,911.38
David Butler [2]:	
Part I	3,556.93
Part II	235.42
Total	3,792.35
Aldo Cirone [1]:	
Part I	2,635.07
Part II	1,822.40
Total	4,457.47
Warren Fallon [2]:	
Part I	4,665.88
Part II	3,125.80
Total	7,791.68
Harold Johnson [2]:	
Part I	1,478.69
Part II	2,938.80
Total	4,417.49
Vincent Maloney [2]:	
Part I	1,692.39
Part II	1,520.30
Total	3,212.69
Kurt Olofsson [2]:	
Part I	2,051.59
Part II	727.04
Total	2,778.63
Charles Hotton [3]:	
Part I	0
Part II	1,848.11
Total	1,848.11

[1] Individuals have paid back all monies due out of personal funds. Interest for these individuals will not increase.

[2] Individuals who have not made required refund on advice of their lawyer or for other personal reasons.

[3] Individual died while on Accidental Disability Retirement (job-connected injury) and no pay back required—only 2% differential due estate.

The total amount is $33,433.25. Recommend HR 1755 be amended to reflect these revised figures.

I regret any inconvenience caused by the calculation changes, however, in my desire to finalize procedures before I retired on July 5, 1986, I met with State Retirement Board officials immediately after I received your call that the sub-committee had recommended approval of HR 1755. The purpose of this visit was to assure that all debts would be resolved upon passage of HR 1755 and that the technicians concerned would be assured of their retirement benefits.

Thank you for your understanding and assistance in this matter.

ANTHONY L. CAMUSO,
Col, ADA, MassARNG,
Personnel Officer.

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